

REMARKS/ARGUMENTS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments and the following remarks.

The Examiner has rejected claims 1-3, 5, 6, 8-10, 17, 18 and 21-29 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0176925 to Paponneau in view of U.S. Patent No. 6,730,088 to Yeh and U.S. Patent No. 6,296,665 to Strnad.

In addition, the Examiner has rejected claims 12 and 13 under 35 U.S.C. §103(a) as being unpatentable over Paponneau in view of Yeh and Strnad and further in view of U.S. Patent No. 6,171,059 to Bucher.

Claims 1, 28 and 29 have been amended. In particular claims 1, and 29 all now state:

"wherein a support surface of said joining plate is enlarged on one side"

This feature is not shown in the cited references, but is supported in the specification in the paragraph starting on page 15 line 13 and also shown for example in FIG. 3.

NEUMANN, C. -1
10/801119

In addition, the examiner has cited *In re Japikse* to justify the rejection of the joining plate having the following features:

wherein said joining plate has an opening formed in said joining plate and configured to be outside of a center of gravity of said joining plate

We believe that the application of *In re Japikse* should not apply in the instance of claims 1, and 29.

In *In re Japikse* the CCPA rejected a means plus function type claim which involved the relocation of a switch. In claims 1, 28 and 29, the "joining plate" is not claimed as a "joining means" therefore factually, *In re Japikse* is entirely different from the facts of claims 1, 28, and 29. This difference is important because in *In Re Japikse* the court stated:

As to that limitation it was held that there would be no invention in shifting the starting switch disclosed by Cannon to a different position since the operation of the device would not thereby be modified.

Means plus function claims as recited in *In Re Japikse* inherently claim functionality or operation of the device. With the present invention as claimed in claims 1, 28 and 29, the functionality is entirely different. For example, the functionality of a joining plate that is configured to be outside of the position of a center of gravity functions entirely

differently from the above references in that it can be positioned in between vertebrae in a offset manner to handle particular stresses imposed by the vertebrae. Therefore, the functionality of the joining plate is entirely different from that of the above cited references.

In addition, with the present invention as claimed in claims 1, and 29, it is not just the functionality of the element being claimed, that is different, but the structure as well. As stated above, the structure of the joining plate having the characteristics of being enlarged on one side, which is not shown by the above cited references. Therefore, it is respectfully submitted that claims 1, 28 and 29 are patentable over the above cited references taken either singularly or in combination.

Claim 28 has also been amended to distinguish claim 28 over the above cited references. In particular claim 28 now claims that the spring is in a groove on one side of the plug in that is opposite the side of the mandrels. This feature is shown in FIG. 23. This feature is not shown in the above references taken either singularly or in combination. Therefore, early allowance of claim 28 is respectfully requested.

NEUMANN, C. -1
10/801119

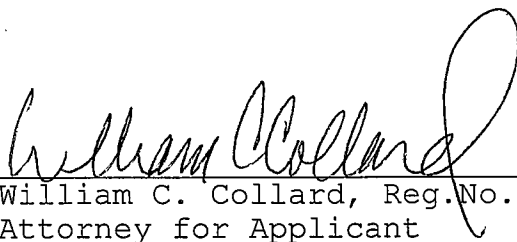
Enclosed is an extension of time extending the time for response. The commissioner is hereby authorized to charge Collard & Roe, P.C.'s deposit account for any additional fee or credit any overpayment to this deposit account of 03-2468.

In conclusion, claims 1, 28 and 29 have been amended. Dependent claims 4, 7, 11, 14, 15, 16, and 20 have been previously canceled. Dependent claims 2, 3, 5-6, 8-10, 12-13, 17-19, 21-27 remain in the application, and since these claims depend ultimately from claim 1 it is submitted that these claims are allowable as well.

Early allowance of the remaining claims is respectfully requested.

Respectfully submitted,

COLLARD & ROE, P.C.
1077 Northern Boulevard
Roslyn, New York 11576
(516) 365-9802



William C. Collard, Reg.No.38,411
Attorney for Applicant

Enclosure: Extension of Time
R:\Patents\N\NEUMANN, C. -1\Amendment to 6-23-08 oa.wpd